As regards persons professing Islam the position is tolerably clear. But as regards persons of Chinese race the law the courts are administering is probably different from any law that exists or ever has existed in China. It even differs from the law which is applied in at least one other jurisdiction within which there are large numbers of locally-domiciled Chinese persons (see *Mong Kuen Wong* v. *May Wong* (11)). The same sort of position may well arise in relation to persons professing the Hindu religion by reason of the enactment in India of the Hindu Marriage Act, 1955.

The questions involved are questions which go to the very root of the law relating to the family which, after all, is the basis of society at least in its present form, and the existence of a civilised society demands that these questions be settled beyond doubt by legislation which will clearly express the modern *mores* of the classes of persons concerned and put the rights of individuals beyond the chances of litigation.

Ong Hock Thye Ag.C.J. (Malaya) concurred.

MacIntyre J.: I have had the advantage of reading the judgment of the Lord President in this appeal with which I concur. I cannot but fully support his call for legislative action to bring our laws in regard to marriage, divorce and succession, in so far as they affect non-Muslims, in conformity with modern thinking on these subjects.

Appeal dismissed.

Solicitors: *Dharmananda & Co.; Yeap & Yeap.*

CHIA BAK ENG & ANOR. v. PONGGOL BUS SERVICE CO.

[F.C. (Tan Ah Tah F.J., Chua and Ambrose JJ.) May 21, 1966]

[Singapore — Federal Court Civil Appeal No. Y. 15 of 1965]

Negligence — Credibility of witness — Judge rejecting evidence of witness — Appellate court coming to conclusion that judge erred in rejecting such evidence — Order for retrial.

In this case the trial judge had dismissed the claim of the plaintiffs in an action arising out of an accident between a cyclist and a bus driven by a servant of the defendants. The trial judge rejected the evidence of a witness, who claimed to be present when the accident happened and gave his reasons for so rejecting the evidence. The plaintiffs appealed.

Held: (1) the reasons given by the learned trial judge for rejecting the evidence of the witness were plainly unsound and the learned trial judge was therefore wrong in rejecting the evidence of the witness;

(2) as in this case the appellate court had not seen the witness it could not decide that the witness was speaking the truth and therefore a retrial should be ordered.

Cases referred to:—

(1) *Montgomerie & Co. Ltd.* v. *Wallace-James* [1904] A.C. 73.

(2) *Thomas* v. *Thomas* [1947] A.C. 487.

FEDERAL COURT.

Denis Murphy for the appellants.

Goh Heng Leong for the respondents.

Cur. Adv. Vult.

Chua J.: This is an appeal from a judgment of the High Court dismissing the claim of the plaintiffs in an action in which the appellants were the plaintiffs and the respondents the defendants. The action arose out of an accident between a cyclist Tan Peng Seak and a bus driven by a servant of the defendants in which Tan Peng Seak was killed.

The main question for determination in this appeal is whether the learned trial judge erred in rejecting the evidence of Lim Ah Huat (P.W.3), the only witness called by the plaintiffs, who claimed to be present when the accident happened.

The evidence of Lim Ah Huat was shortly this. He was riding his motor cycle at a distance of four feet from the left hand edge of the road when he saw a cyclist riding a bicycle about three feet from the edge of the road in the same direction as himself about one hundred feet in front of him. He saw a motor bus overtaking him at a distance of three feet to his right. After overtaking him the bus pulled in to its near side and the bus obstructed his view of the cyclist. He then heard the screeching of brakes when the bus was thirty feet ahead of him and the bus came to a stop. He overtook the bus and he saw in front of the bus the cyclist who had been knocked down and a bicycle lying on its near side four feet in front of the bus and six inches from the edge of the road. He did not see the impact. He found that the cyclist was Tan Peng Seak.

The bus driver did not give evidence as he died before the hearing of the case but he made a report soon after the accident in which he gave his version of the accident. By agreement of the parties this report was admitted.

The defendants called the bus conductor but he did not see how the accident happened. All he could say was that there was an accident and that he saw a person lying in front of the bus and that a bicycle was lying across the road.

The learned judge expressed his views on the evidence of Lim Ah Huat in these terms:

"In this case I regret that I am unable to find any negligence on the part of the driver of the defendant firm since I have decided that no reliance can be placed on the evidence of Lim Ah Huat (P.W.3) who claims to have been an eye witness of what occurred. He did not inspire any confidence in me as he saw nothing of the actual impact although from his version I think that,

if it is true, he should have seen more of it than he describes. On the whole, I think that he arrived at the scene after the accident, though probably shortly afterwards."

The learned judge gave his reasons for not accepting the evidence of Lim Ah Huat. With all due respect to the learned judge, it is my view that his reasons are plainly unsound.

First, the learned judge said:

"His vision could have been obscured by the bus only if the bus had hit the bicycle in the rear."

The underlining is mine. The learned judge was clearly wrong here. The vision of this witness would be obscured when the bus pulled in to its near side after overtaking him. It must be remembered that this witness was travelling four feet from the edge of the road and the cyclist was travelling three feet from the edge of the road and in between them you have this big bus which was travelling, if one looks at the police sketch plan, two feet ten inches from the side of the road.

Secondly, the learned judge said:

"Mr. Murphy suggested that the bus could have caught the cyclist himself in the back or on the right side of his body without leaving any tell-tale marks on the bus and that this could explain why the bus showed no evidence of damage. If the near side front of the bus had caught the body of the deceased on his right then this witness should certainly have had a grandstand view of the whole collision as his view of the impact would not have been obscured."

Here again the learned judge was clearly wrong. The view of this witness could have been obscured in the way that I have described above.

Thirdly, the learned judge said:

"The bus could of course not have hit the back of the cyclist without hitting the back of the bicycle itself."

The learned judge appears to have lost sight of the fact that the cyclist was much broader than the bicycle and it was possible for the cyclist's back to be hit by the bus without the bicycle itself being hit.

Fourthly, the learned judge said:

"His injuries moreover do not support the suggestion that he was hit in his back or on the right side of his body."

One has only to consider the injuries sustained by the deceased to see that the learned judge was clearly wrong again. The deceased had the following injuries: ".....Abrasions round right elbow, right shoulder and left back superiorly, right forearm, right hand dorsally, left lower leg....a comminuted fracture left temporal region above and around the left ear." The cause of death was "fractured skull and laceration of brain." It is clear that the injuries on the left side of the deceased was due to his falling on his left side after being knocked down by the bus. It is also clear that the bus must have hit the deceased on the right side of his body.

The learned judge appeared to have been so unduly influenced by the version of the accident given by the driver of the bus in the report that he could not bring himself to accept the evidence of Lim Ah Huat.

The appellants have satisfied me that this appeal should be allowed as, in my view, the learned trial judge erred in rejecting the evidence of Lim Ah Huat.

Now, the question arises as to what this court should do. Should this court reverse the conclusions of the learned judge and accept the evidence of Lim Ah Huat as true and draw inferences from the facts disclosed in his evidence?

The duty of a court hearing an appeal from the decision of a judge was clearly defined by Lord Halsbury in the House of Lords case of *Montgomerie & Co. Ltd.* v. *Wallace-James,*[1] at p. 75:

"Where a question of fact has been decided by a tribunal which has seen and heard the witnesses, the greatest weight ought to be attached to the finding of such a tribunal. It has had the opportunity of observing the demeanour of the witnesses and judging of their veracity and accuracy in a way that no appellate tribunal can have. But where no question arises as to the truthfulness, and where the question is as to the proper inferences to be drawn from truthful evidence, then the original tribunal is in no better position to decide than the judges of an Appellate Court."

And in another House of Lords case of *Thomas* v. *Thomas,*[2] Lord Thankerton said at p. 487:

"I do not find it necessary to review the many decisions of this House, for it seems to me that the principle embodied therein is a simple one, and may be stated thus: I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. it is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case and, it may be, the individual case in question."

In the present case there is the question of the credibility of the only witness called by the plaintiffs who said he was present when the accident took place and it is not a case where the point in dispute is the proper inferences to be drawn from proved facts. An appellate court in these circumstances is not in a good position

to evaluate the evidence of Lim Ah Huat as it is difficult to estimate correctly the credibility of this witness from the printed evidence. In my opinion I should not in this case without the advantage of seeing the witness come to the conclusion that the witness was speaking the truth.

For these reasons I would order a re-trial in this case.

Tan Ah Tah F.J.: I agree.

Ambrose J.: I agree.

Re-trial Ordered.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

TAN TIAN QUEE v. KUPPUSAMY

[O.C.J. (Choor Singh J.) May 21, 1966]

[Singapore — Suit No. 1038 of 1965]

Contract — Sale of land — Agent — Ostensible authority — Breach of contract.

The defendant had given a written option through his agent for the sale of his land. The option did not specify vacant possession but it was alleged that the agent had led the plaintiff to believe that the land was sold with vacant possession. The option was accepted by the plaintiff. The defendant alleged that subsequently a formal agreement for sale without vacant possession was entered into but this was denied by the plaintiff. As completion did not take place, the plaintiff claimed specific performance or damages for breach. The defendant counterclaimed for the payment of the deposit to him, alleging that it was the plaintiff who had failed to complete.

Held: (1) the agent had no ostensible authority to sell the land with vacant possession and as there was no genuine consensus between the parties no contract was entered into by the parties when the option was exercised;

(2) on the evidence there was a formal agreement for sale without vacant possession and as the plaintiff had failed to complete, he was in breach of contract and the defendant was entitled to payment of the deposit.

Case referred to:—

(1) *Attorney-General for Ceylon* v. *A. D. Silva* [1953] A.C. 461.

CIVIL SUIT.

L. Rayner for the plaintiff.

J. B. Jeyaretnam for the defendant.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiff claims specific performance of a contract for the sale of land, or, alternatively, damages for breach of contract.

The plaintiff pleads as follows. On the 22nd February, 1963, the defendant appointed one Nagalingam as his agent to sell his property known as 81 Kings Road, Singapore, at any time between the 22nd February and the 3rd March, 1963. By his letter of the 23rd February, 1963, Nagalingam offered to sell the property to the plaintiff with vacant possession at the price of $1 per square foot. On or about the 23rd February, 1963, the plaintiff orally accepted the offer. The defendant declined and refused to perform the contract formed by the acceptance of the offer. The plaintiff has at all material times been ready and willing to perform his obligations under the contract.

The defendant admits that he appointed Nagalingam as his agent to sell the property in question. But he alleges that he had no knowledge of Nagalingam's letter of the 23rd February, 1963, that in offering vacant possession Nagalingam was acting outside the scope of his authority, and that if Nagalingam's offer was accepted by the plaintiff, the defendant is not bound thereby.

Nagalingam, who could have thrown much light on the terms of the sale, died on the 27th March, 1963.

The issue that I have to decide is whether or not a binding contract for the sale of the property with vacant possession was entered into by the parties on the 23rd February, 1963. The plaintiff's evidence on this issue is as follows. On the 15th February, 1963, Nagalingam came to his office and showed him an option signed by the defendant which was in the following terms:—

"Mr. I. Modr. Nagalingam,
Singapore.

I hereby give you option to sell my freehold land known as No. 81 Kings Road Singapore (Lot 33-8) at the rate of dollar one ($1.00) per square foot. Vacant possession would be given to the buyer within 60 days from date of paying the initial deposit to my lawyers.

This option shall hold good for 10 days from the date of this chit, 8th instant."

The plaintiff offered Nagalingam 90 cents per square foot. The plaintiff believed that he would get vacant possession because the option mentioned vacant possession. The same afternoon Nagalingam informed the plaintiff that the price offered by him was not acceptable to the defendant. Thereupon the plaintiff raised his offer to 95 cents per square foot and Nagalingam promised that he would convey this offer to the defendant. Nagalingam wrote a letter to the plaintiff on the 18th February, 1963, and another on the 20th February, 1963, stating that the defendant was not willing to accept anything less than $1 per square foot. On the 21st February, 1963, Nagalingam informed the plaintiff that the option had expired but he would have it renewed if the plaintiff would buy the property at $1 per square foot. The plaintiff said he would. On the 23rd February, 1963, the plaintiff received a letter from Nagalingam enclosing the old option